PUBLIC PROSECUTOR v. MADHAVAN NAIR

[A.Cr.J. (Mohamed Azmi J.) May 12, 1976]
[Kuala Lumpur — Selangor Criminal Appeal No. 130 of 1975]

Criminal Law & Procedure — Licence issued in regard to holding of political rally — Speech made by one of speakers in contravention of condition in licence — Responsibility of licensee of assembly — Police Act 1967, s. 27(2).

On an application by the respondent, the O.C.P.D. Petaling Jaya issued him a licence permitting him to convene a political rally on May 20, 1973. Attached to the licence were names of intended speakers and the conditions imposed in connection with the rally. Condition No. 14 imposed on the licensee an obligation to ensure that speeches at the rally should not touch on matters relating to the M.C.E. results and the status of Bahasa Malaysia as the national language as laid down in the Federal Constitution. One of the authorised speakers at the rally was Lau Dak Kee whose appeal against conviction for contravening condition 14 was dismissed in another appeal case. The accused was also charged for contravention of the condition.

In the present case, the learned Magistrate held that the defence should not be called because the respondent should not be held responsible for an offence committed by the speaker, Lau Dak Kee, in the absence of any evidence to connect him with the offence committed by Lau Dak Kee. The Public Prosecutor appealed against the order of acquittal and discharge made by the learned Magistrate.

Held, allowing the appeal: the respondent as a licensee of the assembly assumed responsibility for the entire conduct of the rally and its component members, and he cannot repudiate such responsibility by alleging that the violation of condition 14 took place without his consent or knowledge or in his absence. Since Lau Dak Kee, one of the speakers at the rally was guilty of the breach of condition 14 of the licence, the respondent was liable to be prosecuted for breach of the condition.

Cases referred to:-

(1) *Sibendra Sekhar Roy* v. *Emperor* A.I.R. 1941 Cal. 113 @ 114.

(2) *Emperor* v. *Bhagwat Singh Ram Singh & Ors.* A.I.R. 1941 Lah. 372.

(3) *Emperor* v. *Het Ram* A.I.R. 1929 Lah. 404.

CRIMINAL APPEAL.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the appellant.

Karpal Singh for the respondent.

Mohamed Azmi J.: This is an appeal by the Public Prosecutor against an order of acquittal and discharge made by the learned Magistrate at Petaling Jaya at the close of the case for the prosecution. The charge against the respondent reads as follows:

"That you on May 20, 1973 at about 10.45 p.m. at Padang Balai Raya, Subang New Village, in the district of Petaling Jaya, in the State of Selangor, being a person issued with a licence (No. 297276) to convene an assembly by the Ketua Polis Daerah, Petaling Jaya, contravened a condition of the said licence, to wit, condition 14 thereof which specified that 'Tajuk syarahan tidak boleh menyentoh perkara-perkara berhubung dengan keputusan MCE' when a speaker called LAU DAK KEE spoke on the issue of the MCE results, and that you have thereby committed an offence under section 27(4)(b) of Police Act No. 41/67 and punishable under section 27(8) of the said Act."

The brief facts of the prosecution case are not in dispute. On an application made by the respondent, the O.C.P.D. Petaling Jaya issued him a licence permitting him to convene a political rally on May 20, 1973 from 7.00 p.m. to 12.00 midnight at a field in front of the Subang New Village Community Hall. Attached to the licence were the names of the intended speakers and the conditions imposed in connection with the rally. The conditions were imposed pursuant to section 27(2) of the Police Act, 1967, which provides:

"Any person intending to convene or collect any assembly or meeting or to form a procession in any public place aforesaid, shall before convening, collecting or forming such assembly, meeting or procession make to the Officer-in-Charge of the Police District in which such assembly, meeting or procession is to be held an application for a licence in that behalf, and if such police officer is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the security of the Federation or any part thereof or to excite a disturbance of the peace, he shall issue a licence in such form as may be prescribed specifying the name of the licensee and defining the conditions upon which such assembly, meeting or procession is permitted:

Provided that such police officer may at any time on any ground for which the issue of a licence under this sub-section may be refused, cancel such licence."

Now, condition No. 14 states as follows:

"Tajuk syarahan tidak boleh menyentoh perkara-perkara berhubong dengan keputusan M.C.E. dan kedudukan Bahasa Malaysia sebagai Bahasa Resmi mengikut Perlembagaan Negara."

This means that condition No. 14 imposed on the licensee an obligation to ensure that speeches at the rally should not touch on matters relating to the M.C.E. results and the status of Bahasa Malaysia as the national language as laid down in the Federal Constitution. One of the authorised speakers at the rally was Lau Dak Kee whose appeal against conviction for contravening condition 14 was dismissed vide Selangor Criminal Appeal No. 134 of 1975.*

In the present case, the learned Magistrate held that the defence should not be called because the respondent should not be held responsible for an offence committed by Lau Dak Kee in the absence of any evidence to connect him with the offence committed by Lau, the speaker. It is submitted by the learned Deputy Public Prosecutor that the learned Magistrate erred in law when she suggested and concluded that the prosecution must adduce evidence that a request was made by the respondent to Lau Dak Kee to speak on the subject-matter restricted by condition 14 of the licence. The learned Magistrate is also said to have erred in law and in fact in saying that there was no evidence that the respondent had allowed Lau Dak Kee to speak on the said issue, and also in holding that the respondent could not have contravened condition 14 of the licence when he never even spoke at the assembly.

In *Sibendra Sekhar Roy v. Emperor,*(1) it was held that the expression "violating the conditions" which had been used in section 32 of the Indian Police Act connoted the idea of direct violation on the part of the person whom it was sought to prosecute, for example, by carrying a weapon himself or by expressly permitting weapons to be carried or passive violation by not taking due care to see that the conditions of the licence were fulfilled. Further, in *Emperor* v. *Bhagwat Singh Ram Singh & Ors.,*(2) in considering section 30 of the Indian Police Act,

* See *Lau Dak Kee* v. *Public Prosecutor* [1976] 2 M.L.J. 229.

which is somewhat similar to our section 27(2), it was held that the object of the licence was to secure observance of certain conditions of every member of the procession and not merely by the licensee. The licence was granted to the directors or promoters of the procession as a matter of convenience as it would not be practical to require every potential member of a procession to take out a licence. The directors or promoters of a procession who took out a licence in such a case therefore became responsible for the conduct of the processionists. It would obviously be the duty of the licensee in such a case to explain the conditions of the licence to all who wished to take part in the procession. Finally, in the case of *Emperor* v. *Het Ram*,[3] it was held that a licensee assumed responsibility for the entire conduct of the procession and its component members and he could not repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge or in his absence. If any member of the procession was guilty of the breach of the conditions of the licence, the licensee was liable to be prosecuted for it.

Although the authorities cited above are concerned with processions, in my view, the same principles apply to a person to whom a licence is issued to convene a public rally or assembly. The evidence of the prosecution in this case clearly showed that the respondent was present when Lau Dak Kee was giving his speech in Hakka, in contravention of condition 14 of the licence. Under the circumstances, I hold that the learned Magistrate erred in law and in fact in acquitting and discharging the respondent at the close of the case for the prosecution. Applying the principle in *Het Ram's* case, the respondent as a licensee of the assembly assumed responsibility for the entire conduct of the rally and its component members, and he cannot repudiate such responsibility by alleging that the violation of condition 14 took place without his consent or even without his knowledge or in his absence. Since Lau Dak Kee, one of the speakers at the rally is guilty of the breach of condition 14 of the licence, the respondent is liable to be prosecuted.

Under the circumstances, I allow this appeal by setting aside the order of acquittal and discharge. I also order that this case be remitted to the same Magistrate at Petaling Jaya for calling the respondent to enter his defence.

Appeal allowed.

Solicitors: *Karpal Singh, Wong & Co.*

SOUTH MALAYSIA INDUSTRIES BHD. v. COLLECTOR OF LAND REVENUE, JOHOR BAHRU

[O.C.J. (Syed Othman J.) June 15, 1976]
[Johore Bahru — Originating Motion No. 6 of 1976]

Land Law — Forfeiture — Application by Collector to forfeit land — Land leased, inter alia, "solely for the erection of a factory" — Whether renting out a portion of factory to an urea company for use as a store constitutes a breach of condition — National Land Code, ss. 117, 128 & 129.

The applicant was granted a 60 year old lease over 3 acres of state land with special conditions, the main one being that it was to be used "solely for the erection of a factory". After the factory was built, the company rented out a portion of the factory to a urea company for 3 years for use as a store. The Collector alleged that since the special conditions specify that the land should be used solely for the erection of a factory, it was a breach of conditions to use a portion as a store. He sought to take action to forfeit the land unless the applicant remedies the breach by June 30, 1976. The applicant sought for a declaration that the Collector's action was bad in law.

The issues to be decided were whether the use carried with it the use as a store of a portion of a factory that had been erected, and, if so, whether the store could be used to hold not only the goods of the factory, but also other goods.

Held: (1) a store was a necessary appurtenance or natural incident to a factory, and the putting up of a store did not create a wider obligation than intended by the conditions in title. If it was intended that the factory were to have no store or that it were not to use its store for storage of goods other than the factory's own goods or products, then it must be so expressed;

(2) since there was no special condition in this case, the renting of a portion of the building to be used as a store did not constitute any breach against any condition in the title.

Cases referred to:-

(1) *Kemp* v. *Bird* (1877) 5 Ch.D. 974.

(2) *Hymen* v. *Rose* [1912] A.C. 623.

ORIGINATING MOTION.

Chua Jui Leng for the applicant.

Suleiman bin Hashim (State Legal Adviser) for the respondent.

Syed Othman J.: The applicant was granted a 60 year old lease over 3 acres of State Land with special conditions, the main one being "solely for the erection of a factory". The factory was built. Then the company rented out a portion of the factory to a urea company for 3 years for use as a store. The collector saying there is a breach of the special conditions takes action to forfeit the land, unless the applicant remedies the breach by June 30, 1976.

The applicant now seeks a declaration that the collector's action is bad in law.

The qualified title issued in May 1971 in respect of the land — (H.S.(D) 8589 MLO 3298) in the Mukim of Pulai, District of Johor Bahru — contains special conditions, which are partly in Malay and partly in English. The conditions (with those in Malay rendered in English) appearing in the photostat copy of the qualified title attached to the applicant's affidavit, read:

"SHARAT2 KHAS HAKMILEK SEMENTARA

1. Hakmilek ini ada-lah terta'alok kapada peruntokan2 Kanun Tanah Negara dan kapada segala Sharat2 Nyata dan Sekatan2 —

(a) ia-itu terta'alok saperti itu juga pemberian milek ini telah di-luluskan, lihat Surat-menurut Bil. AAJB.3/V/243/69 and 287/59-11.

Special Conditions

(i) The land hereby leased shall be used solely for the erection of a factory.

(ii) Within 24 months from the date of Registration of Q.T., the lessee shall build upon the land hereby leased only a factory according to plan approved by the Town Council and the Collector of Land Revenue, Johore Bahru.

(iii) The land hereby leased shall not be transferred, charged, sub-leased or otherwise disposed of until the building of the factory required by the condition first above written has been completed as envisaged by endorsement thereon under the hand of the Commissioner of Lands and Mines.

(iv) The lessee will pay and discharge all taxes, rates, assessment and charges whatsoever which may be payable for the time being in respect of the land hereby leased by a Town Council or any other authority.